IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WA.No. 1551 of 2007

AGAINST THE JUDGEMENT IN WPC.29413/2006 DATED 19.6.2007
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APPELLANT: PETITIONER:

M/S. INTEGRATED MEDICAL SYSTEMS,
SNEHA NAGAR-56, ERAVIPURAM, KOLLAM,
REPRESENTED BY ITS MANAGING PARTNER,
SHAMEER M.R.

BY ADV. SRI.BOBBY JOHN
SRI.TOMSON T.EMMANUEL

RESPONDENTS: RESPONDENTS:
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1. THE INTELLIGENCE OFFICER
(INVESTIGATION BRANCH), DEPARTMENT OF
COMMERCIAL TAXES, KOLLAM.

2. THE COMMERCIAL TAX OFFICER,
KVAT-II CIRCLE, KOLLAM.

3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES (D) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) MR.K.B.PRADEEP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1551 of 2007

Dated, this the 5th day of September, 2007

JUDGMENT

H.L.Dattu, C.J.

The appellant before us is a dealer registered under the provisions of the Kerala Value Added Tax Act, 2003, hereinafter referred to as 'the Act'. It is engaged in the sale of medical and laboratory equipments.

(2). In the writ petition, the petitioner had called in question the orders passed by the Intelligence Officer (Investigation Branch), Kollam in exercise of his powers under Section 67(b) and (d) of the Act.

(3) The learned Single Judge by his order dated 19th June, 2007 has rejected the writ petition on the sole ground that if for any reason the petitioner is aggrieved by the orders passed by the Intelligence Officer, it has a right of appeal and without exhausting that remedy, it could not approach this Court. The order passed by the learned Single Judge is as under:

> "Since statutory appeal is provided against the disputed penalty order, there is no scope for interference with the matter in writ proceedings, WP(C) is closed leaving freedom to the petitioner to avail statutory remedy."

(4) Being aggrieved by the aforesaid order passed by the learned Single Judge, the petitioner has filed the present writ appeal.

(5) When the matter was posted before us on 28.6.2007, we had issued emergent notice taking into consideration the various factors which had come to our notice on that day.

(6) Today, an application is filed by the appellant (I.A.No.700 of 2007). In that the following prayer is made:

> "For the reasons stated in the accompanying affidavit it is

> most humbly prayed that this Honourable Court may be pleased to direct the first respondent not to harass the petitioner for the recovery of the amount pursuant to the penalty order which is marked as Exhibit P4 in the Writ Petition pending disposal of the Writ Appeal in the interest of justice."

(7) In our view, hearing of the aforesaid application may not be necessary since the writ appeal itself can be disposed of.

(8) As we have already stated, the petitioner in the writ petition was primarily calling in question the penalty order passed by the Intelligence Officer in exercise of his powers under Section 67(b) and (d) of the Act. If for any reason, the petitioner was aggrieved by the said order, it is expected to file a proper appeal as provided under the statute. The appellate remedy so provided under the statute is not only an effective remedy but also an efficacious remedy. Bypassing that remedy, the petitioner could not have filed the writ petition. Keeping that aspect of the matter in view, the learned Single judge, in our opinion, has rightly rejected the writ petition.

(9) Having gone through the orders passed by the learned Single Judge, we are of the opinion that the learned Judge has not committed any error whatsoever which would call for our interference in appeal. Therefore, the writ appeal is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns